IN THE HIGH COURT OF BOMBAY AT GOA

Second Appeal No.170/2005

Smt. Candolina Conceicao
w/o. Alex Conceico,
r/o. House No.175,
Caranzalem, Goa. ..... Appellant.

V/s.

1. Shri Peter Francis Conceicao
son of Ale Conceicao
r/o. Bombay and employed in
in Carona Shoe Company Pvt. Ltd.,
Caves Road, Jogeshwari (East)
Bombay 60, presently residing at
H.No.175, Caranzalem, Ilhas – Goa.

2. Smt. Filomena Marquinho Conceicao
wife of Shri Peter Francis Conceicao
R/o. Bombay, presently residing at
H.No.175, Caranzalem, Ilhas, Goa.

3. Patriarchate of East Indian through its
Administrator Bishop,
through his Attorney Bhismachi Palace,
Altinho, Panaji, Goa. ..... Respondents.

Ms. Rakhi Chodankar, Advocate for the appellant.

Mr. N.K. Sawaikar, Advocate for respondents No.1 and 2.

CORAM : P.V. KAKADE, J.

DATE : 26TH SEPTEMBER, 2006.

ORAL ORDER :

Heard both sides. The appellant has preferred this appeal against the Judgment and Order passed by the Ad hoc Additional District Judge, Panaji, dismissing the appeal and confirming the Judgment and Order passed by the trial Court.

2. The unsuccessful plaintiff has filed this appeal raising basic initial objection to the Judgment passed by the lower appellate Court on the ground that the Judgment of the lower appellate Court is contrary to the mandatory provision of Order 41, Rule 31 of the Civil Procedure Code. The provision stipulates that the Judgment of the appellate Court shall be in writing and shall state, (a) the points for determination; (b) the decision thereon; (c)the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time it is pronounced be signed and dated by the Judge or by the Judges concurring therein. Therefore, it is clear that it is incumbent upon the appellate Court Judge not only to settle the points for determination, but also record his finding for the decision thereon. The Judgment involved in the present case before us is the stark example as to how the appellate Court should not write a judgment. After cursory referring to the facts involved in the dispute, the learned appellate Court Judge has proceeded to observe that the lower Court framed eight issues

and proceeded to refer to those issues only by numbers, for instance, on issues No.1 and 2 framed by the lower Court, the lower appellate Court Judge observed thus :

> "ISSUE NOS. 1 AND 2 : As regards issue nos. 1 and 2 the Lower Court has decided the same in negative. I do not agree with the findings of Lower Court as regards issue nos. 1 and 2."

Similar is the case with regard to dealing with the other issues.

Firstly, it must be noted that the lower appellate Court has not formulated its own points for determination on the basis of the disputed issues involved, however, it proceeded to refer to the issues framed by the lower Court only by numbers and recorded whether he agreed with the findings recorded or not.

3. Time and again, this Court as well as the Apex Court has emphatically laid down that the provision of Order 41, Rule 31 of the C.P. Code is mandatory. In the case of ***Lakshmi Ram Bhuyan vs. Hari Prasad Bhuyan and ors.*** 2003(1) SCC 197, it is observed by the Apex Court that the provisions of Order 41, Rule 31 of the Code casts an obligation on the author of the appellate Judgment to state the points for determination, the decision thereon, the reasons for the decision and when

the decree appealed from is reversed or varied, the relief to which the appellant is entitled. This Court also has repeatedly observed that the provision is mandatory and an exception could only be made if the points for determination are not happily worded. But the appellate Court Judge has taken each and every issue for discussion and has appreciated it properly by applying his mind to the facts and legal aspects involved in the case. In the case of ***Genba Sahadu Modak vs. Suryakant Vitthal Modak and ors., 2006(1) AIR Bom R 347,*** this view was taken by me as an exception to the said rule when there was no prejudice caused to the other side. However, the present case before us must be termed as a gross case in violation of Order 41, Rule 31 of the Code in the sense that it displays no application of mind by the lower appellate Court Judge while adjudicating the appeal and writing the judgment in such a manner.

4. Be that as it may, without further elaboration, I am inclined to hold that this is a fit case to remand the matter to the Court of Ad hoc Additional District Judge, Panaji with certain directions.

5. Hence, the Judgment and Order passed by the first appellate Court dated 29th July, 2005 is, hereby, set aside. The matter is remanded to the concerned Court for adjudication, afresh and write the Judgment in

consonance with the provisions of Order 41, Rule 31 of C.P. Code, giving cogent reasons and drawing conclusions, according to law, so as to dispose it of within six months from the date of receipt of the writ of this Court.

Pending the hearing of the first appeal, the parties shall maintain status quo as on today with regard to the property involved.

P.V. KAKADE, J.

ssm.